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CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

4 Attorney for Plaintiffs Steven and Suzanne Rogers-Dial, and Automotive Specialists, LLC

5 **UNITED STATES DISTRICT COURT**  
6 **SOUTHERN DISTRICT OF CALIFORNIA**  
7

9 STEVEN ROGERS-DIAL, an individual;  
10 SUZANNE ROGERS-DIAL, an individual,  
11 and AUTOMOTIVE SPECIALISTS, LLC,  
a California limited liability company;

12 Plaintiffs

13 vs.

14 RINCON BAND OF LUISENO INDIANS;  
15 and DOES 1-25;

16 Defendants  
17  
18

10 CV 2656

W RBB

Case No.

**COMPLAINT FOR**

- 1) **DECLARATORY RELIEF**  
2) **PRELIMINARY AND PERMANENT INJUNCTION**

19  
20 COME NOW Plaintiffs, STEVEN ROGERS-DIAL, an individual; SUZANNE ROGERS-  
21 DIAL, an individual; and AUTOMOTIVE SPECIALISTS, LLC, a California limited liability  
22 company; and complain and allege as follows:

23 **I. JURISDICTION**

- 24 1. This U.S. District Court has original federal question jurisdiction based upon  
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1 28 U.S.C. §1331. In addition, this Court has jurisdiction pursuant to 28 U.S.C. §1343 (3) and (4)  
2 as conferred upon the Court in lawsuits authorized by 42 U.S.C. §1983 and §1985, and by virtue  
3 of 28 U.S.C. §§ 2201(a), 2202, and F.R.C.P. 57, which provides for jurisdiction based upon an  
4 action for declaratory judgment.

## 5 **II. VENUE**

6 2. Plaintiffs refer to and re-allege each and every allegation contained in Paragraph  
7 1. above, and by this reference incorporate, as though fully set forth herein, said Paragraph.  
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9 3. Venue is proper in this District in that the Plaintiffs are citizens of the United States  
10 and have their respective residences and businesses within San Diego County, California and  
11 within this District. In addition, all defendants reside within this County, and/or engaged in their  
12 wrongful actions within this County and within this District.

## 13 **III. THE PARTIES**

14 4. Plaintiffs refer to and re-allege each and every allegation contained in Paragraphs  
15 1. through 3, above, and by this reference incorporate, as though fully set forth herein, said  
16 Paragraphs.  
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18 5. At all times relevant herein, Plaintiffs STEVEN ROGERS-DIAL and SUZANNE  
19 ROGERS-DIAL, husband and wife, (collectively "ROGERS-DIAL"), were and are individuals  
20 residing in Valley Center, California, within the County of San Diego, and within this judicial  
21 district. ROGERS-DIAL reside in their home on non-tribal-owned land, located at 33777  
22 Valley Center Road, Valley Center, California 92082 (collectively "Property"), within the County  
23 of San Diego, and within this judicial district. ROGERS-DIAL also maintain and operate a  
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1 business on this Property, known as S & S Dump Truck Service, Inc.

2 6. At all times relevant herein, Plaintiff AUTOMOTIVE SPECIALISTS, LLC  
3 ("AUTOMOTIVE SPECIALISTS") was, and is, a California limited liability company doing  
4 business in Valley Center, California, within the County of San Diego, and within this judicial  
5 district. AUTOMOTIVE SPECIALISTS has been doing business, on non-tribal-owned land,  
6 located at 33777 Valley Center Road, Valley Center, California 92082 (collectively "Property"),  
7 within the County of San Diego, and within this judicial district.  
8

9 7. At all times relevant herein, on information and belief, Defendant RINCON BAND  
10 OF LUISENO INDIANS ("RINCON" or "Defendant") is a "sovereign nation" recognized as such  
11 by the United States Congress and under other applicable federal legislative and adjudicative law,  
12 and is located within the County of San Diego, and within this judicial district.

13 8. Plaintiffs are each tenants residing in and/or doing business on the Property, as  
14 described above, pursuant to rental agreements with Marvin Donius ("Donius"), the Plaintiffs'  
15 landlord, who is, on information and belief, the owner in fee-simple of the Property. Donius is  
16 not a party in this action, and the acts complained of herein are not those of Donius. Reference  
17 is made to Donius herein because he is the Plaintiffs' landlord.  
18

19 9. Plaintiffs are unaware of the true names and capacities whether individual, corporate,  
20 associate or otherwise of Defendants DOES 1 through 25, inclusive, and therefore sues said  
21 Defendants by such fictitious names. Plaintiffs are informed and believe, and upon such  
22 information and belief allege, that each of said Defendants is/are responsible in some manner for  
23 the events and happenings herein referred to, and proximately caused the damages to Plaintiffs, as  
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1 described herein. Whenever in this Complaint any Defendants are the subject of any charging  
2 allegation, it shall be deemed that said Defendants, DOES 1 through 25, inclusive, and each of  
3 them, are likewise a subject of said charging allegations.

4 10. Plaintiffs are informed and believe, and upon such information and belief allege  
5 that at all times herein mentioned, each of the Defendants was the agent, servant and/or employee  
6 of the remaining Defendants, and, at all times herein mentioned, was acting within the course and  
7 scope of said agency and/or employment.  
8

#### 9 **IV. STATEMENT OF FACTS**

10 11. Plaintiffs refer to and re-allege each and every allegation contained in Paragraphs  
11 1. through 10. above, and by this reference incorporate, as though fully set forth herein, said  
12 Paragraphs.

13 12. The dispute underlying this Complaint relates to the lawful enjoyment and use of  
14 the Property by Plaintiffs, as leasehold tenants. The Declaratory and Injunctive Relief sought  
15 herein is urgent, and of vital importance to the Plaintiffs, as explained below. If the injunctive  
16 relief is not granted, and the Defendants are not stopped from undertaking their unlawful activities,  
17 the Plaintiffs will be forced from their home, and businesses, respectively.  
18

19 13. On information and belief, RINCON has been engaged in a systematic effort to  
20 acquire the Property, which is owned by Donius, a non-Indian (hereinafter "Non-Tribal-owned  
21 Land" or "Property"). At least some of the land that abuts the Property is owned, on  
22 information and belief, by RINCON and/or its Tribal members (hereinafter "Tribal Land"). The  
23 history leading up to the present dispute, which has now reached a critical point, is summarized  
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1 below.

2 14. In 1960, the Property was "allotted and conveyed out of Tribal ownership" by a  
3 Bureau of Indian Affairs fee patent. In 1982, an entity known as "Rincon Mushroom  
4 Corporation of America" ("Rincon Mushroom"), a non-Indian-owned business, purchased from a  
5 non-Indian five (5) acres of this land (i.e., the Property), which, on information and belief, abuts  
6 real property owned by RINCON. Since at least 1960, the Property has been, and still remains,  
7 non-Indian-owned land.  
8

9 15. Rincon Mushroom continued to own the Property in fee simple until 1999, when it  
10 sold the Property to Donius, also a non-Indian. Subsequent to the purchase by Donius, the  
11 Property was used as a "non-tribal mixed-use commercial facility," and included leases in  
12 subsections of the Property with various tenants, including the Plaintiffs. As referenced above,  
13 the ROGERS-DIAL family continues to live as tenants on the Property in a manufactured-home,  
14 and operate their business, S & S Dump Truck Service, Inc. out of this location. However,  
15 RINCON has placed concrete barriers in front of the ROGERS-DIAL residence to block these  
16 Plaintiffs from driving their vehicles in and out of their Property.  
17

18 16. Plaintiff AUTOMOTIVE SPECIALISTS is in the towing and impound business,  
19 including providing such services to the California Highway Patrol, the San Diego County  
20 Sheriff's Department, and the Southern California Automobile Club ("AAA"), and has leased and  
21 operated its business on the Property since 2004. However, as mentioned above, RINCON has  
22 placed concrete barriers in front of AUTOMOTIVE SPECIALISTS business to prevent any  
23 vehicles, whether being towed or not, from entering this Plaintiff's business.  
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1           17.     RINCON has been, and continues to engage in an unlawful effort to force Plaintiffs  
2 off the Property, notwithstanding their lawful and binding leases with Donius. If RINCON is  
3 successful in its efforts, the Property will essentially become unmarketable, and subject to a  
4 significant lose of value. To do this, RINCON has acquired the purported jurisdiction of The  
5 Intertribal Court of Southern California - Rincon Band of Luiseno Indians ("Tribal Court"), and  
6 has caused a Preliminary Injunction ("RINCON Injunction") to be issued by that Tribal Court.

7           18.     To obtain its Injunction, RINCON filed in Intertribal Court on or about August 27,  
8 2010 an Application for a Temporary Restraining Order and Motion for Issuance of an Order to  
9 Show Cause ("OSC") as to Donius and his tenants. The Intertribal Court conducted a hearing on  
10 September 2, 2010 and issued an order that no "additional physical property" could be moved onto  
11 the Property. That court issued its ruling in support of the RINCON Injunction, which is  
12 directed towards real property that is not within RINCON'S jurisdiction, and towards individuals  
13 who are not Indian, nor subject to Tribal rules or jurisdiction.

14           19.     The RINCON Injunction purportedly enjoined Donius, and therefore the Plaintiffs  
15 as his tenants, from 1) bringing any additional physical property onto the subject Property; except  
16 for property used to remove other property, and 2) requires that anyone residing on the Property,  
17 and who hold themselves out as "having dominion and control over the subject Property, shall  
18 effectuate the removal of such persons and their physical property from the Subject Property by  
19 October 25, 2010. The RINCON Injunction further stated that "ingress and Egress shall be  
20 allowed for persons representing that they reside on the property until October 25, 2010, provided  
21 ingress is limited to food, water and small personal items. No ingress for such persons shall be  
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1 allowed after October 25, 2010." A true and correct copy of the RINCON Injunction is attached  
2 to and hereby incorporated into this Complaint as Exhibit "A".

3 20. To acquire its Injunction, RINCON asserted false allegations relating to a claim of  
4 a supposed environmental hazard. As one example of RINCON'S unlawful actions, the Tribe  
5 filed a false complaint with the U.S. Environmental Protection Agency ("EPA") alleging that  
6 serious and dangerous environmental damage was being caused by the Plaintiffs, as tenants no the  
7 Property. As a result of RINCON'S claim, the EPA investigated the Property in 2008 and  
8 determined that there was no environmental harm being caused on the Property by the Plaintiffs or  
9 their landlord.  
10

11 21. In addition to the inspection by the EPA, a hydrogeologist and environmental  
12 consultant was hired to inspect the Property and determine whether any such harm has occurred.  
13 This expert, John Peterson, completed an extensive site inspection at the Property on May 31,  
14 2010. In his comprehensive Declaration prepared under oath, the expert details his inspection  
15 and review of various documents. In his conclusion, he states that "none of the documents that  
16 [he] reviewed showed any evidence of actual or threatened groundwater contamination." Mr.  
17 Peterson concludes by stating that "the examined record is devoid of any evidence evincing or  
18 indicating any groundwater contamination, actual or threatened, that could have any deleterious  
19 effect upon the Rincon Tribe's drinking water supply or otherwise injure any tribal member on the  
20 Rincon Reservation." A true and correct copy of the Declaration by John Peterson, dated June 7,  
21 2010, is attached to and hereby incorporated into this Complaint as Exhibit "B".  
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23  
24 22. RINCON has also asserted a claim of environmental harm by contending that  
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1 AUTOMOTIVE SPECIALISTS is causing damage by leaking oil from impounded vehicles on  
2 AUTOMOTIVE SPECIALISTS' Property. AUTOMOTIVE SPECIALISTS' business in the  
3 RINCON area relates solely to operating a tow truck service and an impound yard to take vehicles  
4 impounded by law enforcement. The vehicles typically remain impounded for short periods of  
5 time, before being retrieved by their owners. Not only are these vehicles usually not "junk yard-  
6 type" cars, but they are parked in Plaintiff's facility on concrete. Even if some drops of oil were  
7 to leak from an engine, the oil would remain on the concrete. In fact, concrete is generally  
8 impervious to the movement of liquids through its surface. If necessary, Plaintiffs are prepared  
9 to offer expert testimony confirming that it is not possible for any claimed oil leakage to travel  
10 through the concrete and down into any aquifer that may be below. In other words, there is no  
11 basis or merit to the claim that this Plaintiff is causing harm to the underground water supply of  
12 the adjoining land.

14 23. Before asserting that leaking vehicle oil was causing environmental harm,  
15 RINCON had had also earlier claimed that an environmental harm existed because of the burned  
16 debris that remained after the local fires of October 2007. After the fires, the debris was  
17 removed, and the damage caused by those fires on the Property has been repaired and/or cleaned  
18 up.

20 24. The reason RINCON continues to assert its claims of environmental harm is to  
21 attempt to acquire jurisdiction over the subject Non-Tribal-Owned Land by relying upon an  
22 exception to the lack of Tribal authority over Non-Tribal-Owned Land that was stated by the U.S.  
23 Supreme Court in Montana v. United States (450 U.S. 544 (1981)). In that seminal case, the high  
24



1 Court held that an Indian Tribe had no authority to regulate hunting and fishing by non-Indians on  
2 non-Indian-owned fee land, notwithstanding the fact that the land was within the reservation. Of  
3 the two exceptions to the limit on a tribe's sovereign powers over Non-Tribal-Owned-Land,  
4 RINCON contends that it may exercise jurisdiction pursuant to the second exception (known as  
5 Montana's "second exception," which provides that a tribe could exercise "civil authority over the  
6 conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some  
7 direct effect on the political integrity, the economic security, or the health or welfare of the tribe."  
8 The Supreme Court also stated that the two exceptions in Montana should be read narrowly.  
9 Instead, RINCON is attempting to utilize false claims of environmental harm to support its efforts  
10 to assert jurisdiction over the Property.  
11

12 25. As another example of RINCON'S unlawful conduct, during the summer of 2009  
13 individuals from RINCON used a chain saw to cut down the main business sign, about 10' x 10' in  
14 size, which was on the Property. RINCON individuals also took down and removed the  
15 business sign of AUTOMOTIVE SPECIALISTS, which was located on AUTOMOTIVE  
16 SPECIALISTS' leased Property. Robert Moreno, owner of AUTOMOTIVE SPECIALISTS,  
17 witnessed these actions by RINCON as they occurred. A report of the incident was filed with  
18 the San Diego County Sheriff's Department at their Valley Center Substation.  
19

20 26. It is widely believed by various individuals that that RINCON would like to own  
21 Donius' Property, probably for purposes related to nearby Harrah's Casino. Donius and  
22 Plaintiffs are aware of a series of acts undertaken by RINCON to intimidate and harass these  
23 individuals, all for the purpose of forcing Donius, and his lawful tenants, to be off the Property  
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1 permanently. Although it is not known how Plaintiffs will react if RINCON interferes with  
2 Plaintiffs' residence and businesses, it is cause for serious concern. Needless to say, the  
3 emotions and anger on the part of Plaintiffs have recently increased significantly, and have now  
4 reached a critical point as RINCON attempts to assert its specious claim of authority over Donius  
5 and Plaintiffs, and tries to force Plaintiffs from the Property.

6 27. On or about March 22, 2010, Donius filed a complaint in federal court (Donius v.  
7 Bo Mazzetti, et al., Case No. 10cv591-WQH-POR) for Injunctive and Declaratory Relief against  
8 certain individuals in their official capacities as members and/or representatives of the RINCON  
9 BAND (hereinafter the "Donius Action"). Similar to the present Complaint, that action  
10 involved issues relating to tribal regulation of non-Indian fee simple land located within the  
11 boundaries of the RINCON reservation. In ruling upon a Motion to Dismiss filed by RINCON,  
12 Judge Hayes of this judicial district dismissed Donius' complaint against those individuals based  
13 upon the failure of Donius to exhaust all tribal remedies in that action. However, in the present  
14 action, the Plaintiffs have not been parties in any previous judicial action relating to the dispute,  
15 including the Donius Action and the RINCON Tribal Court's issuance of its Preliminary  
16 Injunction.  
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18 28. After RINCON obtained its Injunction, the Defendants erected concrete barriers,  
19 which were chained together, which effectively blocked the Plaintiffs from entering or leaving  
20 their Property in their vehicles, including their residence and respective places of business.  
21 These concrete barriers presently remain in place. On September 29, 2010, Robert Moreno, the  
22 owner of AUTOMOTIVE SPECIALISTS sent a letter to the attorney for Donius, complaining that  
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1 RINCON'S actions will force this Plaintiff to go out of business. A true and correct copy of this  
2 letter is attached to and hereby incorporated into this Complaint as Exhibit "C".

3 29. As one would expect, since RINCON erected its concrete barriers, the tensions and  
4 anxiety felt by the Plaintiffs have increased. Steven and Suzanne Rogers-Dial have remained in  
5 their home, but are not allowed to drive their vehicles up to their residence. When a third-party  
6 was attempting to enter the Property to remove a vehicle that was being stored there, Steven  
7 Rogers-Dial helped this individual by opening a gate that belonged to AUTOMOTIVE  
8 SPECIALISTS. As soon as he did so, someone apparently called the tribal police, who  
9 responded along with Deputies from the San Diego County Sheriff's Department. On  
10 information and belief, apparently words were exchanged between Steven Rogers-Dial and law  
11 enforcement officers, resulting in this Plaintiff being arrested and taken to the Valley Center  
12 Sheriff's Substation. Steven Rogers-Dial was issued a misdemeanor citation (P.C. 148(a)) for  
13 "delay/resisting [a] peace officer," and released a short time later. A true and correct copy of  
14 the misdemeanor citation is attached to and hereby incorporated into this Complaint as Exhibit  
15 "D".  
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18 30. As another example of RINCON'S unlawful attempt to exert regulatory authority  
19 over Plaintiffs, on or about October 30, 2010, RINCON Tribal Police issued a "Civil Citation"  
20 ("Citation") to ROGERS-DIAL with regard to a banner those Plaintiffs have placed on their  
21 Property. The banner references the dispute between the Plaintiffs and RINCON, and includes a  
22 website that provides additional information about this matter. The Citation states that the  
23 Plaintiffs have "posted [an] illegal sign" on the Property, in violation of the Tribe's "Peace and  
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1 Security Code Section 16.0, Sign Ordinance Part A". After the undersigned counsel for the  
2 Plaintiffs requested a copy of the subject ordinance, RINCON withdrew the Citation. A true and  
3 correct copy of the RINCON Citation is attached to and hereby incorporated into this Complaint  
4 as Exhibit "E".

5 31. Underlying Plaintiffs' contentions is the fact that by attempting to assert jurisdiction  
6 over these non-Indians who occupy Non-Tribal-owned Land, RINCON is engaged in conduct that  
7 is in violation of federal law, including the civil rights protections that Plaintiffs are entitled to  
8 under 42 U.S.C. §§ 1983 and 1985. Among the examples of Defendants' violations of law are  
9 the attempt to assert jurisdiction under the second Montana exception by falsely claiming harm to  
10 the Tribe because of claimed environmental hazards, as well as the attempt to deprive Plaintiffs of  
11 their civil rights by falsely claiming sovereign authority over the subject Non-Tribal-owned Land.

12 32. The relief sought by the Plaintiffs in this Complaint is urgent. If RINCON is not  
13 restrained from continuing its unlawful activities, the ROGERS-DIAL family will be forced out of  
14 them home and business, and the vehicle impound business of AUTOMOTIVE SPECIALISTS  
15 will not survive. This harm will result, even though the Plaintiffs are lawful tenants on the  
16 Property.

17 33. RINCON intends to enforce its Preliminary Injunction issued by Intertribal Court  
18 of Southern California against Donius. At the tenants of Donius, the Plaintiffs are directly  
19 affected by the threatened actions by Defendants. The urgency of this request for Declaratory and  
20 Injunctive Relief is apparent. RINCON is determined to cause Plaintiffs to leave the Property, by  
21 whatever means. By continuing to try to force the Plaintiffs to abandon their leasehold  
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1 interests, this dispute is likely to escalate and become more dangerous.

2 34. On information and belief, Defendants do not dispute the facts that the subject  
3 Property is owned by Donius in Fee Simple, and that neither RINCON nor any of its members are  
4 lawful owners of the subject Property. Notwithstanding these facts (or perhaps because of them)  
5 RINCON is now attempting to assert physical control over the Plaintiffs and their Leasehold  
6 interests in the Property by engaging in the wrongful actions described above.

## 7 **V. CAUSES OF ACTION**

### 8 **FIRST CAUSE OF ACTION**

#### 9 **(Declaratory Relief Against All Defendants)**

10 35. Plaintiffs refer to and re-allege each and every allegation contained in Paragraphs 1.  
11 through 34. above, and by this reference incorporate, as though fully set forth herein, said  
12 Paragraphs.  
13

14 36. On or about August 27, 2010, RINCON filed in InterTribal Court an Application  
15 for a Temporary Restraining Order and Motion for Issuance of an Order to Show Cause ("OSC")  
16 as to Donius and his tenants. The Tribal Court conducted a hearing on September 2, 2010 and  
17 issued an order that no "additional physical property" could be moved onto the Property. The  
18 Tribal Court issued its ruling in support of the RINCON Injunction, which is directed towards real  
19 property that is not within RINCON'S jurisdiction, and towards individuals who are not Indian,  
20 nor subject to Tribal rules or jurisdiction.  
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22 37. The RINCON Injunction purportedly enjoined Donius, and therefore the Plaintiffs  
23 as his tenants, from 1) bringing any additional physical property onto the subject Property; except  
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1 for property used to remove other property, and 2) requires that anyone residing on the Property,  
2 and who hold themselves out as "having dominion and control over the subject Property, shall  
3 effectuate the removal of such persons and their physical property from the Subject Property by  
4 October 25, 2010. The RINCON Injunction further stated that "ingress and Egress shall be  
5 allowed for persons representing that they reside on the property until October 25, 2010, provided  
6 ingress is limited to food, water and small personal items. No ingress for such persons shall be  
7 allowed after October 25, 2010."  
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9 38. Plaintiffs assert that the Defendants do not have regulatory or adjudicative authority  
10 as to either these non-Indian Plaintiffs or as to the fee simple land upon which they are tenants.

11 39. An actual controversy exists between Plaintiffs and Defendants relating to the  
12 intentions of the Defendants to force Plaintiffs from their leasehold interests in the subject Non-  
13 Indian-Owned Land. Specifically, Plaintiffs dispute the effort by RINCON to regulate the  
14 subject fee-simple land, which is owned by a non-Indian. To do this, RINCON has acquired the  
15 purported jurisdiction of The Intertribal Court of Southern California - Rincon Band of Luiseno  
16 Indians, and has caused an injunction (i.e., "RINCON Injunction") to be issued by that InterTribal  
17 Court. However, the RINCON Injunction is directed towards real property that is not within  
18 RINCON'S jurisdiction, and toward individuals who are not Indian, nor subject to Tribal rules or  
19 jurisdiction.  
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21 40. The controversy concerns the Plaintiffs' rights with respect to their respective  
22 leasehold interests on the Property. Specifically, Plaintiffs contend that any prospective or  
23 future actual or attempted enforcement against Plaintiffs by Defendants should be found, declared  
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1 and adjudged facially unconstitutional, unconstitutional as applied, and/or illegal pursuant to  
 2 applicable provisions of federal and California law. Such provisions requiring this judicial  
 3 determination to be made include, but are not limited to, the Supremacy Clause of the U.S.  
 4 Constitution (Art. VI, Clause 2), the Taking, Due Process, and Equal Protection Clauses of the  
 5 Fifth and Fourteenth Amendments to the Constitution, cognate provisions of the California State  
 6 Constitution, and federal civil rights protections afforded by 42 U.S.C. §§ 193 and 1985 (3).

7  
 8 41. Plaintiffs further contend that any prospective or future actual or attempted  
 9 enforcement or other actions by RINCON or its representatives with regard to the RINCON  
 10 Injunction would so clearly exceed and go beyond any authority that can legally or  
 11 constitutionally be conferred upon RINCON as to be *ultra vires* as to such actions by RINCON.

12 42. Defendants dispute and deny Plaintiffs' contentions.

13 43. By reason of the matters asserted herein, Plaintiffs desire a judicial determination  
 14 of their rights, duties and obligations, and a declaration that the Defendants may not enforce the  
 15 Injunction as to these Plaintiffs.

16  
 17 44. Plaintiffs have no other adequate or speedy remedy.

## 18 **SECOND CAUSE OF ACTION**

### 19 **(Preliminary and Injunction Relief Against All Defendants)**

20 45. Plaintiffs refer to and re-allege each and every allegation contained in Paragraphs 1.  
 21 through 44. above, and by this reference incorporate, as though fully set forth herein, said  
 22 Paragraphs.

23  
 24 46. As stated above, Plaintiffs contend that any prospective or future actual or  
 25



1 attempted enforcement against Plaintiffs by Defendants should be found, declared and adjudged  
2 facially unconstitutional, unconstitutional as applied, and/or illegal pursuant to applicable  
3 provisions of federal and California law. Such provisions requiring this judicial determination to  
4 be made include, but are not limited to, the Supremacy Clause of the U.S. Constitution (Art. VI,  
5 Clause 2), the Taking, Due Process, and Equal Protection Clauses of the Fifth and Fourteenth  
6 Amendments to the Constitution, cognate provisions of the California State Constitution, and  
7 federal civil rights protections afforded by 42 U.S.C. §§ 193 and 1985 (3).  
8

9 47. Plaintiffs further contend that the Defendants do not presently have, nor will they in  
10 the future have, as a matter of law, any regulatory or adjudicatory authority as to these Plaintiffs  
11 and their leasehold interests in the Property. Unless this Court issues a preliminary injunction  
12 and/or permanent injunction requiring and ordering RINCON to desist and refrain from any  
13 further actual or attempted enforcement, prospectively and in the future, of any and all purported  
14 regulatory or adjudicative authority over these Plaintiffs and their leasehold interests, these  
15 Plaintiffs will suffer serious and irreparable injury and other damages that are not compensable in  
16 money damages or by monetary relief of any nature.  
17

18 48. The immediate injuries to be sustained by the Plaintiffs should the Court not enjoin  
19 RINCON from its actions include the loss of the ROGERS-DIAL home and their business, as well  
20 as the destruction of AUTOMOTIVE SPECIALISTS' business being operated on the Property.  
21 This latter Plaintiff has already been advised by the California Highway Patrol and the San Diego  
22 County Sheriff's Department that the towing and impound agreements between AUTOMOTIVE  
23 SPECIALISTS and these law enforcement agencies will be terminated.  
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**50. Plaintiffs have no other adequate or speedy remedy.**

## VI. CONCLUSION

53. It is essential that the status quo and semblance of peace be maintained, as an interim measure, in the interim before this Court has the opportunity to hear testimony and other evidence to be presented in a noticed hearing by all parties. For this reason, the Court is respectfully requested to issue a preliminary injunction to temporarily prevent further damages and harm to the Plaintiffs.

///

**PRAYER FOR RELIEF**

WHEREFORE, for each and every Cause of Action stated herein, and for this Complaint in its entirety, Plaintiffs pray for the following:

**FIRST CAUSE OF ACTION**

1. That the Court issue a declaration of the rights and duties of the parties; specifically whether Defendants may exercise Tribal authority over the Plaintiffs, including the ingress and egress on Plaintiffs' Property, which is secured by the Plaintiffs' rental agreements with the owner of the Property, Marvin Donius.

2. That the Court further issue a declaration that the Defendants are not constitutionally or legally entitled to exercise regulatory or adjudicative authority or jurisdiction.

**SECOND CAUSE OF ACTION**

3. That the Court issue a Preliminary and/or Permanent Injunction enjoining the RINCON BAND OF LUISENO INDIANS, their agents, attorneys, successors, and representatives and all persons acting in concert or participating with them, from;

- a) Entering the Plaintiff's Property;
- b) Taking any further steps to bar the ingress and egress by Plaintiffs on their Property, and/or
- c) Tying to force the Plaintiffs to abandon their Property, including their leasehold interests.

**AS TO ALL CAUSES OF ACTION**

4. That Plaintiffs recover reasonable attorney fees and costs incurred in this action, and that the Court award all other appropriate relief.

1           5.     That the Court retain jurisdiction and maintain the status quo pending the issuance  
2 of a final order from this Court regarding the relief sought in this Complaint.

3           6.     For any other equitable, legal, and/or monetary relief that the Court may deem  
4 proper under the circumstances.

5           Respectfully submitted,

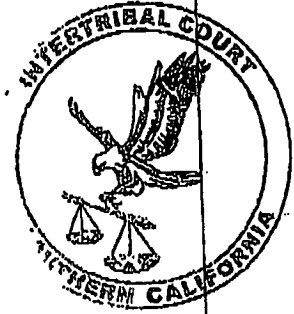
6 DATED: December 22 2010     LAW OFFICES OF NEWELL E. CUMMING  
7

8  
9 By: \_\_\_\_\_

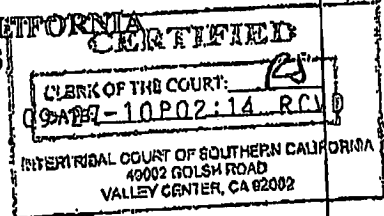
10 Newell E. Cumming, Esq.

11 Attorney for Plaintiffs Steven and Suzanne Rogers-Dial  
12 and Automotive Specialists, LLC  
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**EXHIBIT "A"**



THE INTERTRIBAL COURT OF SOUTHERN CALIFORNIA  
RINCON BAND OF LUISENO INDIANS



RINCON BAND OF LUISENO INDIANS,

Plaintiff,

v.

MARVIN DONIUS, and MUSHROOM  
EXPRESS, INC., a California Corporation,  
and RINCON MUSHROOM  
CORPORATION OF AMERICA, INC., a  
California Corporation,

Defendants.

Case No. RINCON-02972009

PRELIMINARY INJUNCTION

THIS MATTER came before the Court on the Plaintiff's Application for a Temporary Restraining Order and Motion for Issuance of an Order to Show Cause why Defendants Should not be Held in Civil Contempt, filed on Friday August 27, 2010. A hearing on the Application and Motion was conducted on Thursday, September 2, 2010. Present at the hearing were Scott Crowell and Scott Wheat, attorneys for Plaintiff and, George McGill, attorney for Defendants.

At the conclusion of the September 2, 2010 hearing, the Court ordered Defendants not to move any additional physical property onto the Subject Property, and to present the Court with an agreed order consistent with those terms by Friday, September 8, 2010. The Court did receive

1 a proposed order from Plaintiffs on Friday, September 8, 2010, but that proposed order was not  
2 agreed to by Defendants.

3 Plaintiffs then re-noted their Motion for hearing on Tuesday, September 21, 2010 at  
4 which the following were present: Scott Crowell and Scott Wheat, attorneys for Plaintiff and,  
5 George McGill, attorney for Defendants. At the September 21, 2010 hearing, the Court  
6 entertained extensive additional argument from the parties on the Plaintiff's Motion. The Court  
7 has also received voluminous exhibits in support of the Plaintiff's Motion which included the  
8 record of proceedings in the following state and federal court causes of action: *Rincon*  
9 *Mushroom Corporation of America v. Mazzetti et. al*, D.C. S.C. Cause No. 09 CV 2330 WQH  
10 POR; *Donius v. Mazzetti et. al*, US D.C. S.C. Cause No. 10-CV-0591-WQH-POR; *Rincon*  
11 *Mushroom Corporation of America v. SDG&E*, 37-2008-00101838 CU BT-NC.

12 Upon review of the record and upon consideration of the arguments of counsel, the Court  
13 finds and concludes that the Plaintiff has met its burden for issuance of injunctive relief *pendent*  
14 *lite* in this cause and the Court hereby issues the following PRELIMINARY INJUNCTION,  
15 pursuant to ICSC Code of Civil Procedure Title III § 2.1.2.01

16  
17 1. Defendants are hereby enjoined from bringing any additional physical property  
18 onto the subject property, specifically including automobiles;

19  
20 2. Defendants may bring equipment onto the Subject Property only for the sole  
21 purpose of removing physical property present on the Subject Property as of September 21,  
22 2010;

23 3. If there are any persons residing on the Subject Property, they are doing so in  
24 violation of prior orders of this Court. Defendants, who hold themselves out as having dominion  
25 and control over the Subject Property, shall effectuate the removal of such persons and their  
26

PRELIMINARY INJUNCTION



1 physical property from the Subject Property by October 25, 2010. Ingress and egress shall be  
 2 allowed for persons representing that they reside on the property until October 25, 2010,  
 3 provided ingress is limited to food, water and small personal items. No ingress for such persons  
 4 shall be allowed after October 25, 2010.

5 4. Emergency, Security and other governmental and essential public service  
 6 providers may access the Subject Property if necessary to perform their duties, consistent with  
 7 this ORDER.

8 5. The Rincon Tribal Law Enforcement Department is hereby ORDERED to enter  
 9 and remain upon the Subject Property to effectuate restrictions on ingress and egress thereto  
 10 consistent with the terms of this Order, and shall do so in a manner that minimizes traffic  
 11 disruptions along Valley Center Road. Specifically, Rincon Tribal Law Enforcement Department  
 12 is authorized to establish a roadblock within the boundaries of the subject property that allows  
 13 sufficient room for vehicles to enter from Valley Center Road and exit on to Valley Center Road.  
 14 A log shall be maintained of all vehicles and equipment entering on to the subject property.  
 15 Access beyond the roadblock shall be limited subject to the terms of this Order. Copies of this  
 16 Order shall be provided to all persons attempting ingress on to the subject property. Questions  
 17 should be directed to the Office of the Rincon Attorney General at 760-638-1982.

18 6. This ORDER shall remain in effect until lifted amended or modified by this  
 19 Court.  
 20  
 21

22 ///

23 ///

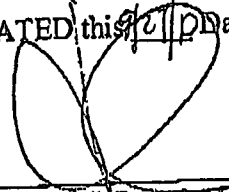
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 26 PRELIMINARY INJUNCTION

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7. Finally, the Court notes that Defendants have been served with the Compliant in this cause. The Court encourages Defendants to answer the complaint or to otherwise file a dispositive motion in lieu of a Complaint so this matter may proceed to disposition in accordance with the ITSC Code of Civil Procedure.

DATED this 21<sup>st</sup> Day of September, 2010



Anthony J. Brandenburg  
Chief Tribal Judge of the  
Intertribal Court of Southern California

PRELIMINARY INJUNCTION

**EXHIBIT "B"**

1 GEORGE MCGILL (SB #031873)  
2 1328 Sun Valley Road  
3 Solana Beach, CA 92075-1647

4 Telephone: (858) 481-8446  
5 Facsimile: (858) 481-1246

6 Attorney for Plaintiff

7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA

10 MARVIN DONIUS,

12 Plaintiff,

14 vs.

16 BO MAZZETTI; STEPHANIE  
17 SPENCER; CHARLIE KOLE;  
18 DICK WATENPAUGH; STEVE  
19 STALLINGS; KENNY KOLE;  
20 DOE I AND DOE II,

22 Defendants.

Case Number: 10 CV 0591 WQH POR

DECLARATION OF JOHN PETERSON  
IN OPPOSITION TO MOTION OF  
SPECIALLY APPEARING DEFENDANTS  
TO DISMISS COMPLAINT FOR LACK  
OF JURISDICTION AND FAILURE  
TO EXHAUST TRIBAL REMEDIES

Judge: William Q. Hayes  
Date: June 21, 2010  
Time: 11:00 A.M.  
Courtroom: 4, Fourth Floor

ORAL ARGUMENT REQUESTED

23 I, JOHN PETERSON, declare:

25 A. Background.

26 1. I am a hydrogeologist and environmental consultant. I have  
27 personal knowledge of the facts set forth in this declaration, and if  
28 called as a witness I could and would testify competently thereto.

07-2010 12:17 558 551-7549  
Jun-07-10 12:21am From: GEORGE MCILL

Peterson Environme. Services #0749 P.002 '036  
0504911740 1-801 P.02/11 P-068

2. From 1981 to 2003, I was employed by the County of San Diego ("County") as the County Hydrogeologist with the Department of Planning and Land Use. I also served as the CEQA Regulatory Manager in the later years of my employment with the County.

3. As the County's hydrogeologist, I was responsible for the review of, and approval or denial of, all development projects that relied upon or involved groundwater within the unincorporated area of the County. I was also responsible for ensuring that any project in the unincorporated area of the County that relied upon or used groundwater fully met and satisfied all requirements imposed by the County Groundwater Ordinance.

4. In addition to my duty as the County's hydrogeologist, I also acted as the CEQA Regulatory Manager with responsibility for reviewing projects for environmental compliance. In this position I managed a section of environmental specialists who were assigned the task of preparing and completing CEQA review for all private projects within the County.

B. Education and Qualifications.

5. I have a Bachelor of Science from San Diego State University (1976) and a Master's of Science in Geology with a specialty in hydrogeology (1978), also from San Diego State University. I am a California Certified Hydrogeologist (#90) and a California Professional Geologist (#3713).

6. As the owner and principal of Peterson Environmental Services (established in the spring of 2003), I have directed many groundwater investigations and studies. I have also provided expert witness (forensic groundwater) investigations and testimony in numerous litigated cases both in San Diego County and elsewhere in California. I am qual-

07-10 12:18 658 551-7549  
JUN-07-10 12:23PM FROM GEORGE W. HILL

Peterson Environmental  
0804011240

Services 00745 P.003 /006  
1-801 P.04/01 P-863

1 ified to provide expert witness testimony in all state and federal  
2 courts in California

3 C. Review of Facts of This Case.

4 7. For my review of the facts of this case, I have completed the  
5 following:

6 (1) On Monday, May 31, 2010, I completed an extensive site  
7 inspection at 33777 Valley Center Road, Valley Center, San Diego County.

8 (2) I have carefully reviewed each of the following docu-

9 ments: (a) Letter dated July 27, 2005 from US EPA to Marvin Denius; (b)

10 Letter dated January 18, 2008 from Department of Health and Human Serv-

11 ices to Kristie Oronoco; (c) Letter dated September 4, 2008 from US EPA

12 to Craig Benson (81-Page Letter Report, Mushroom Express Assessment);

13 (d) March 31, 2010 Supplemental Declaration of Marvin Denius filed in

14 related case (Rincon Mushroom Corp. v. Mazzetti, et al.); (e) Letter

15 dated October 19, 2008 from US EPA to Marvin Denius; and (f) May 13,

16 2010 Declaration of Rick Minjares filed in this case.

17 D. Review of Minjares Declaration.

18 8. The Minjares declaration sets forth opinions and conclusions

19 (pages 6-12) that this property represents "the likely threat that his-

20 toric and present land use activities on the Subject Property to soil,

21 water and other natural resources on the Reservation" (lines 18 and 19,

22 page 6). Mr. Minjares also asserts that "contamination spilled on the

23 Subject property would ... 2) drain into underground injection wells on

24 the property that are likely discharging to surrounding soils ..." (lines

25 4-7, page 7). Mr. Minjares appears to be attempting to "make the case"

26 that this property "is" contaminating the local groundwater system and

27 allegedly detrimentally impacting the Rincon Tribe drinking water supply

28 system. There does not appear to be any separation in the Minjares'



07-10-10 12:16 355 551-7543  
Jun-07-10 12:22pm From: GEORGE W. H. P.

Peterson Environmental Services 00749 P.004 / 006  
0004011246 T-007 P.004/07 F-000

1 declaration between what "could be" and what "is" occurring on the  
2 property. Indeed, no evidence is offered in the Minjares declaration  
3 supportive of the existence of any actual or threatened water  
4 contamination emanating from this property. It is true, as the Minjares  
5 declaration points out, contaminated material was created as a result of  
6 the October 2007 Peemacha wildfire, but all of this material was fully  
7 removed from the site by August 2008.

8 E. Technical Facts Regarding the Potential  
9 of Groundwater Contamination on the  
10 Subject Property.

11 9. It is clear that most of the structures on this property were  
12 completely destroyed during the October 2007 wildfire event; significant  
13 and substantial damage occurred with respect to all on-site facilities.  
14 Following this wildfire event, the US EPA Emergency Response Section was  
15 activated, and the EPA's Team 9 Superfund Technical Assessment and  
16 Response Team prepared, conducted and completed an assessment and  
17 cleanup plan for the property. This work included an exhaustive site  
18 assessment, with extensive water quality sampling, sampling of fly ash,  
19 and clean up of the site. The EPA report documented that "all water  
20 samples results were found to be negative or below US EPA maximum  
21 contaminant levels for all investigated analytes" (page 5). The  
22 assessment did identify fly ash with levels of certain elements above  
23 recommended standards, but as a result of and following this work, the  
24 site was completely cleaned up, and some 47 tons of contaminated ash,  
25 soil, and debris were eventually removed from the site (page 10). The  
26 EPA report concludes on page 12 that the "TPH and metals contaminated  
27 ash and soil were successfully removed from the site on August 22,  
28 2008". No clean up as to groundwater was required, since no samples  
collected by registered professionals under EPA supervision showed any



1/17/2010 12:10 PM 536 551-7549  
Jan-07-10 12:22PM From: GEORGE MCGILL

Peterson Environme.  
0000011240

Services #0749 P.005 '006  
T-007 P.007/01 P-023

1 groundwater contamination at all.

2 F. ~~Findings~~.

3 10. None of the documents that I have reviewed showed any evidence  
4 of actual or threatened groundwater contamination. As noted above, the  
5 US EPA did not document any elements above maximum contaminant levels as  
6 to any and all investigated analytes. The Minjares declaration does not  
7 provide any evidence to support a claim that any condition on the site  
8 is causing groundwater contamination, by reason of infiltration into the  
9 underlying aquifer or otherwise. It is true that two underground septic  
10 systems exist on this property. However, both of these systems were  
11 opened up on August 18, 2008 (see Donius declaration, page 7). This  
12 work was directly supervised by the EPA. Underground septic systems do  
13 discharge "treated" waste water to the groundwater system, but this is  
14 the standard level of care for wastewater flows, and this type of system  
15 is utilized with respect to discharge of all domestic waste water within  
16 the County and regions outside municipal waste water systems. Under-  
17 ground disposal systems such as those in place on this property consti-  
18 tute the accepted standard of care in San Diego County.

19 11. The Minjares declaration refers to "underground injection  
20 wells on the property" (see line 6, page 7). In my document review and  
21 personal on-site inspection and investigation, I could not identify any  
22 such facilities on this property. Yesterday I questioned the property  
23 owner, Marvin Donius, as to whether any injection wells had been present  
24 on the property, and he confirmed my impression from my previous in-  
25 vestigation that no injection wells had been in place or currently exist  
26 on the property. The only facility that could be identified as being  
27 related to an injection well is the onsite sump, but this is a closed  
28 sump without an outlet (see page 4, September 4, 2008 US EPA letter).

06/07/10 01:31PM From: GEORGE W. MC  
 06/07/10 12:18 PM 000 001-1549  
 Jan 07 10 12:22 PM From: GEORGE MC6116

reterson ENVIRONME..  
 0904011840

Services 06/07 P.006 0006  
 Y-887 P.07/07 F-020

1 Mr. Denius confirmed to me that this closed sump had been used to store  
 2 surface storm water that was later used for landscape irrigation. No  
 3 injection wells have been or are now on this property.

4 12. The Minjares declaration also refers a number of times to "the  
 5 unconfined nature of the aquifer" (pages 6 and 7). I would agree that  
 6 the aquifer underlying the project is "unconfined" as defined by profes-  
 7 sional hydrogeological standards (see Groundwater, Freeze and Cherry,  
 8 1979, page 46). However, it is important to note that basically all  
 9 alluvial aquifers within the central sections of San Diego County are  
 10 unconfined. This is the norm for the County. Specifically, the entire  
 11 San Luis Rey alluvial aquifer system is unconfined. As such, there is  
 12 nothing unusual or unique in the fact that the aquifer underlying this  
 13 property is "unconfined".

14 c. Conclusion.

15 13. The examined record is devoid of any evidence evincing or in-  
 16 dicating any groundwater contamination, actual or threatened, that could  
 17 have any deleterious effect upon the Rincon Tribe's drinking water sup-  
 18 ply or otherwise injure any tribal member on the Rincon Reservation.

19 I declare under penalty of perjury that the foregoing is true and  
 20 correct.

21 Executed at La Jolla, California, this 7th day of June, 2010.

22   
 23 JOHN PETERSON  
 24  
 25  
 26  
 27  
 28

**EXHIBIT "C"**

## Automotive Specialists Towing

33777 Valley Center Road

Valley Center, CA 92082

(760) 749- 2501

September 29, 2010

Attorney George McGill:

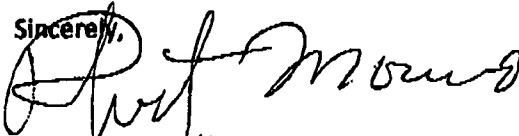
My name is Robert Moreno. I am the owner of Automotive Specialists Towing, located at 33777 Valley Center Road. My company provides towing service and storage space for authorities such as CHP and the SD Sheriff's Department. We also provide removal and disposal service for abandoned cars in our community. We provide emergency road service for Auto Club of Southern California (AAA) and various other motor clubs.

On September 29, approximately 8:30 am, I approached my place of business and was confronted by the Rincon Tribal Police and was informed that they had a Federal Court order restricting ingress and egress from the property. They also informed me that I was allowed to remove vehicles from the property but was not allowed to bring any in for storage. This will immediately end my contract with CHP and SD Sheriff's if I do not have a storage area. This storage area is designed with security fencing, barbed wire along with a night watchman on the premises. Our dispatching and office management is located within this secured area.

I have not received any formal notice that our operation was in jeopardy. The consequences of this action taken by the Rincon Tribe will cause my business to shut down; a major loss in income and staff will be laid off. This will also cause a deficiency in the area of respond time to accident scenes in the surrounding area. With the heavy traffic from four casinos, it is imperative that my tow company is readily available to respond within the contracted time of 20 minutes.

I find it difficult to comprehend why such an essential service I provide would be a hindrance to the community. Every precaution is taken to maintain a good image, in a safe environment, for my staff and the community.

Sincerely,



Robert Moreno/Owner

**EXHIBIT "D"**

Defendant Copy

443491

## San Diego County Sheriff's Department

## NOTICE TO APPEAR

☐ Traffic ☐ Nontraffic

Misdemeanor

Date of Violation 10/30/10 Time 1135 ☐ AM ☒ PM Day of Week S M T W T F S Case Number 100A5912Name (First, Middle, Last) STEVEN ANTHONY ROSENBLAT ☐ Owner's Responsibility (VC 40001)Address 33777 VALLEY CENTER RDCity Valley Center State CA ZIP Code 92082Driver's License Number 1N5048072 CA AM State CA Class AM Commercial Lic. ☐ Yes ☒ No Birth Date 9-8-57 Age 53Sex M Hair BROWN Eyes BLE Height 5-0 Weight 190 Race W ☐ Commercial Veh. (VC 15210(b))Vehicle License Number / VIN  State  ☐ Hazardous Material (VC353)Year  Make  Model  Body Style  Color Registered Owner or Lessee ☐ Same as DriverAddress ☐ Same as DriverCity  State  Zip Code  ☐ Evidence of Financial Responsibility

Correctable Violation (VC 40510(b))	Yes	No	Violation Code and Section	Description	Misdemeanor or Infraction (Circle)
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		PC 145 (a)(1)		M I
<input type="checkbox"/>	<input type="checkbox"/>		DELIN / ASSIST		M I
<input type="checkbox"/>	<input type="checkbox"/>		ARREST OFFICER		M I
<input type="checkbox"/>	<input type="checkbox"/>				M I

☐ Booking Required (see reverse)Speed Approx.  P.F. Max.  Veh. Lmt.  Safe Spd.  Radar  Beat 809 ☐ Continuation Form IssuedLocation of Violation(s) 33777 Valley Center RD City of Occurrence Valley Center ☐ Unincorp.Weather Conditions Clear Road Conditions Good Traffic Conditions Light Station/Sub-Stn. 5492 Division PAI☐ Violations not committed in my presence, declared on information and belief. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.Date 10/30/10 12:00 PM Arresting or Issuing Deputy 1310 I.D. Number Name of Arresting Deputy, if different from Issuing Deputy  I.D. Number 

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE PLACE AND TIME INDICATED BELOW

X Signature Steven A. Rosenblatt

Superior Court of San Diego County - FOLLOW THE INSTRUCTIONS ON THE REVERSE

<input checked="" type="checkbox"/> North Division - Criminal	325 South Meirose, Vista, CA 92081	(760) 201-8600
<input type="checkbox"/> North Division - Traffic	325 S. Meirose, Ste 350, Annex Bldg, Vista, CA 92081	(760) 201-8500
<input type="checkbox"/> East Division	250 East Main Street, El Cajon, CA 92020	(619) 456-4100
<input type="checkbox"/> East Division - Branch	1428 Montecito Road, Ramona, CA 92065	(760) 738-2435
<input type="checkbox"/> Central Division - Criminal	220 West Broadway, San Diego, CA 92101	(619) 450-5700
<input type="checkbox"/> Central Division - Traffic	8950 Clairemont Mesa Blvd., San Diego, CA 92123	(858) 634-1800
<input type="checkbox"/> Juvenile Division	2901 Meadowlark Drive, San Diego, CA 92123	(858) 634-1616
<input type="checkbox"/> South Division	500 Third Avenue, Chula Vista, CA 92010	(619) 746-6200

DATE 10/30/10 TIME 3:30 ☒ AM ☐ PM ☐ To be notified ☐ You may arrange with the clerk to appear at a night session of the court

SO-99 REV 09/05 Judicial Council of California Form Rev. 02 20 05 (Veh. Code § 40500(b), 40513(b), 40522, 40600; PC § 853.9) TR-130

**EXHIBIT "E"**



# RINCON BAND OF LUISEÑO INDIANS

## CIVIL CITATION



RTL 000057

Today's date: <u>11/19/2010</u>		Issuing Officer's name (print name): <u>JACK W. MUSIC, JR.</u>		Signature: <u>[Signature]</u>	
Personal Information					
Person's last name: <u>ROGERS</u>		First: <u>STEVEN</u>		Middle: _____	
Reservation Resident?		Tribal status (check one)		Rincon member	
<input checked="" type="checkbox"/> Yes		<input checked="" type="checkbox"/> Non-member			
<input type="checkbox"/> No					
Legal name? If not, legal name: (former name): _____					
Birth date: _____		Age: _____		Sex: <input checked="" type="checkbox"/> M <input type="checkbox"/> F	
Street address: <u>23777 Valley Center Rd.</u>		Driver's license no.: _____		State: _____	
P.O. Box: _____		City: <u>Valley Center</u>		ZIP code: <u>92082</u>	
Occupation: <u>UNKNOWN</u>		Employer: _____		Employer phone no. ( ) _____	
Height: <u>5'</u>	Weight: <u>180</u>	Hair color: <u>Brown</u>	Eye color: _____	Distinguishing marks/ Tattoos: <u>UNKNOWN</u>	
Information Regarding Violation					
Peace and Security Code section(s) violated: <u>Section 16.D. SIGN ORDINANCE, PART A</u>					
Amount of fine: <u>\$80</u>	Date of Violation: <u>11/13/2010</u>	Description of vehicle			
Location of violation (address or property description): <u>33777 Valley Center Rd</u>		License # / VIN	Year	Make	Model
					Color
					Type
Description of violation: <u>Steve Rogers posted ILLEGAL SIGN ON Said property of Mushroom Factory. Violated SIGN ORDINANCE, PART (A)</u>					
<u>See Attached Document with pictures.</u>					
Acknowledgement of Personal Service					
I acknowledge that a copy of this completed citation form was provided to me by a Tribal Law Enforcement Officer. My signature is not an acknowledgement of guilt, but a promise to respond to this notice. A civil infraction is a non-criminal offense for which imprisonment is not an available sanction. * The fine amount may increase if prior citations were issued for the same offense.					
Signature: _____		Date: <u>11/1</u>		Court Date: <u>12/21/2010</u>	
NOTICE OF PAYMENT DUE, RIGHT TO REVIEW AND HEARING REQUEST FORM LOCATED ON BACK OF CITATION					
FOR TRIBAL COURT USE ONLY					
Date received: <u>11/1</u>	Hearing date: <u>12/21/2010</u>	Date notice of hearing sent: <u>11/1</u>	Extension to: <u>11/1</u>		

White - Court Copy Yellow - Defendant Copy Pink - Officer's Copy

JS 44 (Rev. 12/07)

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

STEVEN ROGERS-DIAL; SUZANNE ROGERS-DIAL; and  
AUTOMOTIVE SPECIALISTS, LLC(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Newell E. Cumming, Esq. (760) 747-6600  
145 South Fig Street, Suite L, Escondido, CA 92025

## DEFENDANTS

RINCON BAND OF SAN LUISE RIVER INDIANS; and DOES  
1-25;County of Residence of First Listed Defendant San Diego  
(IN U.S. PLAINTIFF CASES ONLY)NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED San DiegoAttorney 10-cv-2656  
Karen Graham, Esq.

W RBB

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business In This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business In Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Sec. 1983 and 1985 (3)Brief description of cause:  
Federal civil rights protection

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE HayesDOCKET NUMBER 10cv591-WQH-POR

DATE

12/21/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

2/555

AMOUNT

350.00

APPLYING IFP

JUDGE

MAG. JUDGE

MS 12/23/10

Court Name: USDC California Southern  
Division: 3  
Receipt Number: CAS021555  
Cashier ID: msweeney  
Transaction Date: 12/23/2010  
Payer Name: LO OF NEWELL E CUMMING

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CIVIL FILING FEE  
For: ROGERS-DIAL V RINCON BAND  
Case/Party: D-CAS-3-10-CV-002656-001  
Amount: \$350.00  
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CHECK  
Check/Money Order Num: 5655  
Amt Tendered: \$350.00  
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Total Due: \$350.00  
Total Tendered: \$350.00  
Change Amt: \$0.00

There will be a fee of \$45.00  
charged for any returned check.